

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE  
DIVISION I

STATE OF TENNESSEE

VS.

PERRY AVRAM MARCH

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CASE NO: 2004-D-3113

2006 MAR 14 11:27  
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**STATE'S RESPONSE TO MOTION TO SUPPRESS  
FRUITS OF SEARCH WARRANT**

The Office of the District Attorney General, prosecuting on behalf of the State of Tennessee, respectfully requests that this Court deny the motion to suppress filed by the defendant, Perry Avram March. Contrary to the claims of the defendant, the warrant is not a constitutionally invalid general warrant, and the affidavit in support of the search warrant establishes probable cause for the search.

***A. The search warrant is not a constitutionally invalid general warrant.***

"A search warrant can only be issued on a probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched." Tenn. Code Ann. § 40-6-103; *see also* U.S. Const. amend. IV; Tenn. Const. art. I, § 7; *State v. Vanderford*, 980 S.W.2d 390, 403-04 (Tenn. Crim. App. 1997). The requirement that the items to be seized must be "particularly described" has been interpreted to mean that the "warrant must be sufficiently definite so that the officer executing it can identify the property sought with reasonable certainty." *State v. Meeks*, 876 S.W.2d 121, 126 (Tenn. Crim. App. 1993) (citation omitted). For example, a warrant authorizing a search for "evidence of the crime or crimes of armed robbery" would be

invalid because it is too general. *See State v. Meeks*, 867 S.W.2d 361, 371 (Tenn. Crim. App. 1993). However, a warrant authorizing the seizure of “any letters, papers, records, materials, or other property which pertain to drug sales” is proper. *See State v. Meadows*, 745 S.W.2d 886, 891 (Tenn. Crim. App. 1987). Similarly, our supreme court has upheld a warrant authorizing a search for “crack cocaine, illegal narcotics, pictures, records, ledgers, tapes or items that tend to memorialize drug sales and proceeds therefrom.” *See State v. Henning*, 975 S.W.2d 290, 296 (Tenn. 1998).

Furthermore, a “search warrant which sufficiently describes certain items but fails to provide a sufficient description for other items has been held to be partially valid if the inadequate portion can reasonably be severed.” *Meeks*, 867 S.W.2d at 372. If a warrant is partially valid,

Items which were found during the legitimate execution of such a search would be subject to seizure if the seizure were reasonable. The reasoning is that if a warrant is partially valid and the invalid portion may be severed, the executing officers still have lawful access to the property to be searched. Also, they have lawful access to all locations on that property which can reasonably contain the items specified in the valid portion of the warrant. Finally, if during this lawful search they find items which are not specified in the warrant, but which are immediately apparent to be contraband, fruit of crime, instrumentalities of crime, or evidence of criminal conduct, their right to seize those items is governed by the plain view exception to the warrant requirement.

*Id.* at 373.

The search warrant at issue authorized the police to search for “The body of Janet Gail Levine March, F/W 02/20/63 and any unnamed evidence pertaining to the disappearance and or murder of this victim. Any information contained in software or hardware relating to and including any personal computers.” (copy attached) Although the defendant takes issue with the phrase, “any unnamed evidence pertaining to the

disappearance and or murder of this victim,” that phrase does not exist in a vacuum. The warrant also specifically authorized the police to look for the body of Janet March and any information relating to her disappearance contained in the software or hardware of any personal computers. Thus, the warrant is similar to the one found to be proper in *Meadows*, which authorized the search for “any letters, papers, records, materials, or other property which pertain to drug sales.” *See Meadows*, 745 S.W.2d at 891. Accordingly, the warrant is not an unconstitutional general warrant.

Furthermore, even if the phrase, “any unnamed evidence pertaining to the disappearance and or murder of this victim,” were severed, the warrant would still be partially valid, as it specifically authorized the search for the body of Janet March and evidence of her disappearance contained in the software or hardware of any personal computers. Accordingly, the officers were authorized, at a minimum, to search anywhere in the house that could conceal a body or computer software and hardware, and any evidence discovered in plain view in such locations would have been properly seized.

***B. The affidavit in support of the search warrant sufficiently establishes probable cause.***

A search warrant affidavit “must set forth facts from which a reasonable conclusion might be drawn that the evidence is in the place to be searched.” *State v. Smith*, 868 S.W.2d 561, 572 (Tenn. 1993); *see also State v. Vann*, 976 S.W.2d 93, 105 (Tenn. 1998). Probable cause is to be determined on a case by case basis. *See Meeks*, 876 S.W.2d at 124. In determining whether a warrant was supported by probable cause, a reviewing court is to consider “only the information contained within the four corners of the affidavit.” *State v. Keith*, 978 S.W.2d 861, 870 (Tenn. 1998). The finding of



probable cause by the judge issuing the warrant is entitled to “great deference.” *State v. Jacumin*, 778 S.W.2d 430, 431-32 (Tenn. 1989). “The reviewing court’s standard is whether the magistrate had a substantial basis for concluding that a search warrant would uncover evidence of wrongdoing.” *Id.*

Contrary to the claims of the defendant, the search warrant affidavit, prepared by Detective David Miller, contained more than enough information for the issuing judge to have a substantial basis for concluding that a search warrant would uncover evidence of wrongdoing. According to the affidavit (copy attached), Marissa Moody, a friend of the Janet March, talked to Ms. March on the night of August 14, 1996, and made plans with Ms. March for their sons to play together at the March residence on August 15, 1996. This information contradicted the claim of the defendant that his wife left on an extended vacation. Additionally, there had been no activity on any of Ms. March’s bank accounts, and Ms. March had not been heard from by anyone. She failed to show up for her son’s sixth birthday party or his first day of school. On September 7, 1996, Ms. March’s car was located at Brixwoth Apartments. On September 15, 1996, construction workers working in close proximity to the defendant’s residence reported smelling a foul odor as if something or someone was dead during the week of September 8, 1996. Furthermore, the defendant failed to cooperate fully with the investigation of his missing wife. He was untruthful about previous acts of violence, which were reported to Detective Miller by the defendant’s previous employers, as well as other information about financial and domestic incidents with Ms. March. Finally, Detective Miller received information from the defendant that Ms. March used a personal computer for lists and letters, leading him to believe that information stored on such a personal computer could enable him to locate

Ms. March. Considering all of this information, the issuing judge was justified in finding probable cause and issuing the search warrant.


For the foregoing reasons, the State submits that the motion to suppress filed by the defendant should be denied.

Respectfully submitted,



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Tom Thurman  
Tenn. Sup. Ct. Reg. #4738  
Deputy District Attorney General  
Washington Square, Suite 500  
222 Second Avenue North  
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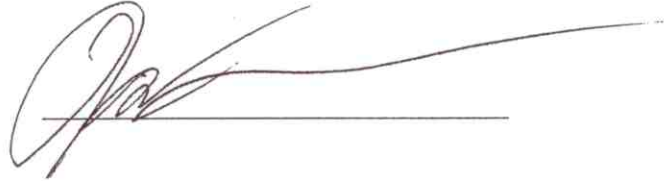


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Kathy D. Aslinger  
Tenn. Sup. Ct. Reg. #19282  
Assistant District Attorney General  
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Nashville, TN 37201-1649  
(615) 862-5500

# CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed to John E. Herbison, Attorney at Law, 2016 Eighth Avenue South, Nashville, Tennessee 37204, and to William D. Massey, Attorney at Law, 3074 East Street, Memphis, Tennessee 38128, on this the 19<sup>th</sup> day of March 2006.

A handwritten signature in dark ink, appearing to be "J. E. Herbison", is written over a horizontal line.

# SEARCH WARRANT

To any Peace Officer within or of said County:

Proof by affidavit having been made before me by Detective David L. Miller

that there is probable and reasonable cause to

believe that Perry A. March

is now in possession and control of certain evidence of a crime, to-wit: The body of Janet Gail Levine March, F/W 02/20/63 and any unnamed evidence pertaining to the disappearance and or murder of this victim. Any information contained in software or hardware relating to and including any personal computers.

You are therefore hereby commanded to make immediate search on the person of said Perry A. March

and in the premises used and occupied by him (~~his~~) located and described as follows: Same being located in Davidson County, Tennessee, and more particularly described as follows: A tutor style single family dwelling, out buildings, and real property located #3 Blackberry Road Nashville, Davidson County, Tennessee. Further described and known to your Affiant as being a rock type house located on approximately five acres at the dead end of Blackberry Road with the number three affixed to a black mailbox located at the end of the gravel driveway.

including all of the buildings, outhouses, and vehicles found thereon, for the said evidence; and if you find the same, or any part thereof, to bring it forthwith before me at Nashville, Tenn.; and I hereby certify that I signed and delivered this search warrant for execution to DAVID L. Miller

at 7:50 clock, A. M., on this, the 17th day of SEP, 19 86

Judge of Part [Signature] of the Metropolitan General Sessions Court

STATE OF TENNESSEE  
DAVIDSON COUNTY

STATE OF TENNESSEE  
vs.

Perry A. March

Affidavit and Search Warrant for  
Evidence of a Crime

COPY

OFFICER'S RETURN

SEARCHED 17th day of September, 19 86  
INDEXED 17th day of September, 19 86  
SERIALIZED 17th day of September, 19 86  
FILED 17th day of September, 19 86

Metropolitan General

Session

1 Book on Drugs

3 sets of keys

1 ladies Purse & contents

1 Note

1 pair ladies jeans

1 bathtub mat

Assorted Papers

Tin with Plant substance

Dry Cleaning Receipt

Knife

Crash Can

[Signature]  
Metropolitan General Sessions

OFFICER'S RETURN

SEARCHED 17th day of September, 19 86  
INDEXED 17th day of September, 19 86  
SERIALIZED 17th day of September, 19 86  
FILED 17th day of September, 19 86

Metropolitan General Sessions



9-17 10 AM OFFICER COPY

ORIGINAL  
AFFIDAVIT AND SEARCH WARRANT FOR EVIDENCE OF A CRIME

☐ DEFENDANT'S COPY  
☐ JUDGE'S COPY

AFFIDAVIT

State of Tennessee,  
County of Davidson

Personally appeared before me, Michael F. Mandell, Judge of  
Part 17 of the Metropolitan General Sessions Court for said State and County, the undersigned  
Detective David L. Miller, Metro Police Dept., and made oath in due  
form of law that there is probable and reasonable cause to believe that Perry A. March

is ~~(are)~~ now in possession of certain evidence of a crime, to wit: The body of Janet Gail  
Levine March Female White 02/20/63, and any unnamed evidence  
pertaining to the disappearance and or murder of said person. Any  
information contained in software or hardware relating to and  
including any personal computers.

(Describe with as much particularity as possible the evidence to be searched for)

~~The said~~ evidence is now located and may be found in possession of said person ~~(s)~~ in Davidson County,  
Tennessee, on his ~~(her)~~ ~~(their)~~ person, and in premises used and occupied by him ~~(her)~~ ~~(them)~~, described and located as  
follows: Same being located in Davidson County, Tennessee, and more particularly described as follows:  
A tutor style Single family Dwelling, out buildings, and real  
property located at #3 Blackberry Road, Nashville, Davidson County,  
Tennessee. Further being described and known to your affiant to  
be a rock type house located on approximately five acres at the  
dead end of Blackberry Rd. with the number three affixed to a black  
mailbox located at the end of a gravel driveway.

This affidavit is made (from the personal observation and knowledge of affiant) ~~(upon information received by affiant)~~  
~~which affiant only believes to be true~~ as follows:

(strike inappropriate words)

SEE ATTACHED AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

9-17

Det David Miller

(Signature of Affiant)

Sworn to and subscribed before me this

17<sup>th</sup> day of

Sept

1986



AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

On August 29, 1996 Mr. Perry A. March reported this victim to be missing. On 09/14/96 Detective Tim Mason interviewed Marissa Moody, a friend of the victims. She stated that she talked with the victim on the night of 8/14/96 and made plans with the victim for their sons to play together at the March Residence on 08/15/96. This contradicts the statement given to your Affiant by Mr. Perry A. March, that the victim left on an extended vacation. There has been no activity on any of her bank accounts. This victim has not been heard from by anyone known to your Affiant. The victim did not show up at her son's sixth birthday party nor did she show up for her son's first day of school. Her vehicle was recovered at Brixwoth Apartments on Brixwoth Ln. Nashville, Davidson County Tennessee on 09/07/96. Mr. Perry A. March is considered by the Police as a suspect in the disappearance of this victim whom your Affiant now believes to be deceased. On September 15, 1996 construction workers working on the Crater Hill Project, located in close proximity to Mr. Perry A. March's residence reported to your Affiant and gave written statements to your Affiant, stating during the week of September 08, 1996 they smelled a foul odor as if something or someone was dead. Your Affiant through his experience as a Homicide Investigator knows that decomposing bodies have a very distinctive foul odor. Mr. Perry A. March has refused to take a polygraph examination citing that he is on medication. Mr. Perry A. March has not cooperated fully with the investigation of his missing and or murdered wife. Mr. Perry A. March has been untruthful with your Affiant about previous acts of violence as has been reported to your Affiant by his previous employers as well as other information about financial and domestic incidents with the missing and or murdered victim. Based on information received from Perry A. March, this victim

communicated by use of personal computers by lists and letters. Information stored in the personal computers located at the residence of Perry A. March and this victim could lead to the whereabouts of this victim. Your Affiant prays for a search warrant to be issued against Mr. Perry A. March, his residence, any out buildings and his personal and real property and any or all software, hardware and personal computers, so a proper search can be conducted in an attempt to locate the body of the victim as well as other as yet unnamed evidence that pertains to the disappearance of this missing and or murdered victim.

Det. David Miller

(Signature of Affiant)

Sworn to and subscribed before me this 17th day of Sept, 1996.

MJM  
Judge of Part H of the Metropolitan  
General Sessions Court.

COPY